

KILLINGTON PROPERTY TAX COURT DECISION COULD HAVE STATEWIDE CONSEQUENCES

On September 3, 2002, Rutland Superior Court Judge William Cohen issued a decision in a case in which the town of Killington challenged the state's method for determining the aggregate fair market value of property in Killington for the purpose of establishing the statewide property tax for the town as required by Act 60. Using strong language, the judge ruled "this case leads to the inescapable conclusion that the State's methodology used in 1997 [to determine the State's equalized education property value] were 'about as rational as rolling dice,'" quoting a previous state Supreme Court decision. The decision goes on to state that:

Reliance on such inadequate methodologies to collect a substantial statewide property tax from Vermont's residents cannot be condoned. Not only did those methodologies result in the State's failure to reliably determine the State's equalized education property value as required by 32 V.S.A. 5405(a), but those methodologies resulted in disproportionate and inequitable taxation among Vermont's municipalities in violation of the constitutional requirement of proportional contribution. Accordingly, this court concludes that the State's 1997 methodologies ...are arbitrary and capricious, and their use by the commissioner of taxes was an abuse of the discretion granted to the commissioner...."

The case arose from Killington appealing the amount included in the state's notice of fair market value of the town's equalized education property values. The values are used to determine what the town's obligation for education taxes will be in the coming year. The state sent the notice to all towns in January of 1998 for the grand list for April 1, 1997. All towns have received these notices every January for the preceding April grand list. Section 5408 of Title 32 allows a town to petition for a redetermination of the state-determined values within 30 days of receipt of the notice. Appeals from any redetermination decision of the Director of Property Valuation and Review can go to the state Valuation Appeal Board and then to the superior court of the county in which the municipality is located. Killington is the only town that has pursued this matter this far, at least for the 1997 grand list.

The town and the state both prepared substantial testimony, both hiring expert witnesses to bolster their cases. The court incorporated much of the evidence and arguments in its 53-page decision. The decision reads like a statistics textbook using terminology including coefficients of dispersion, measures of central tendency and stratification methodologies. However, when summing up the impact of the methodological deficiencies used by the state to determine the 1998 education taxes, the court noted that "for 43% of the municipalities, their reappraisals deviated from their state equalized amounts by plus/ minus 20%," and "the State over- or underpredicted AFMV by at least \$1 million in 94 of the 107 (88%) municipalities studied," and lastly, that when compared to actual sale prices of 4,403 individual properties actually sold, "the State's equalized value deviated from the actual sale price (fair market value) as follows:

- 65%, or 2,872 deviated more than plus/minus 5%;
- 43%, or 1,898 deviated more than plus/minus 10%;
- 30%, or 1,333 deviated more than plus/minus 15%; and

- 21%, or 909 deviated more than plus/minus 20%.”

The court based its decision on “the overwhelming evidence in this case,” that pointed to the lack of integrity in the state’s approach to establishing aggregate fair market value (AFMV). Judge Cohen ordered the state to “redetermine [the Town of] Killington’s 1997 AFMV using statistically appropriate methodologies.”

The court did not order that the state re-determine all 1997 appraisals, because Killington is the only municipality that has appealed the state’s action to the Vermont Superior Court even though “the inequities caused by the State’s 1997 methodologies had a statewide impact and that as a result, municipalities paid disproportionate taxes.” However, the Judge goes on to say that “[t]he court notes that this result does not preclude the Commissioner of Taxes from performing such a statewide redetermination or the Legislature from requiring such a redetermination.”

Despite this strong case, the impact on other Vermont municipalities and on the grand lists for years other than 1997 is yet to be determined. Because this is a Superior Court rather than a Vermont Supreme Court decision, it does not set statewide precedence. It is unclear at this time whether the case will be appealed.

While the case only affects Killington, and only for its 1997 grand list, by dismissing the state’s methodologies for determining AFMV, the decision calls into question the entire appraisal process used to determine all towns’ current and future state education property tax obligations, unless substantial changes have been or will be made. Since the 1997 value was set, the state did order an evaluation of the state’s equalization study, referred to as the Almy Report, which was presented to the state in July of 1999. The Report listed 20 recommendations for changes to the 1997 methodologies, only some of which have been implemented. The question remains as to whether fully implementing the Almy Report recommendations or the limited changes actually implemented by the state have rectified the problems identified in the Killington decision enough to make the current methodologies used by the state for years since 1997 not “arbitrary and capricious” and more “rational than rolling dice.”

The court also made sure that its decision was not a condemnation of all of Act 60: “Nothing in this decision addresses the wisdom behind Act 60, rather, this decision is focused solely on the sufficiency of the methodologies used by the State in the 1997 equalization study to implement Act 60.”

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